

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JENNIFER LEE SWARS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 2:23-cv-01351-CSK

ORDER GRANTING MOTION FOR  
ATTORNEY FEES

(ECF No. 18)

Presently before the Court is Plaintiff Jennifer Lee Swars's counsel's motion for attorney's fees under 42 U.S.C. § 406(b), seeking an award of \$15,000.<sup>1</sup> PI. Mot. (ECF No. 18.) This amount represents approximately 15% of Plaintiff's past-due benefits of \$96,958. PI. Mot. at 3; ECF No. 18-1 at 3. This is less than the 25% Plaintiff and Plaintiff's counsel agreed to in the contingency agreement. PI. Mot. at 3. Counsel agrees to refund to Plaintiff \$7,600 for attorney's fees previously paid under the Equal Access to Justice Act ("EAJA"). See PI. Mot. at 1.

For the reasons that follow, the undersigned GRANTS the motion for attorney's

---

<sup>1</sup> This matter is before the undersigned pursuant to 28 U.S.C. § 636(c) based on the consent of all parties. (ECF Nos. 6, 8, 9.) Upon the retirement of the previous magistrate judge and the filing of the instant motion for attorney fees, this case was reassigned to the undersigned. (ECF No. 20.)

1 fees in the amount of \$15,000.

2 **I. BACKGROUND**

3 On July 11, 2023, Plaintiff filed a Complaint challenging the Commissioner's  
4 denial of Social Security benefits. (ECF No. 1.) Plaintiff moved for summary judgment on  
5 October 11, 2023. (ECF No. 11.) The parties then stipulated to a remand for further  
6 proceedings before the Commissioner. (ECF No. 13.) The Court granted this stipulation,  
7 remanded for further proceedings under 42 U.S.C. § 405(g), and entered judgment in  
8 favor of Plaintiff. (ECF No. 14; see ECF No. 15.) The parties stipulated to an award of  
9 EAJA fees in the amount of \$7,600.00, which the Court granted. (ECF Nos. 16, 17.)

10 In the further proceedings before the Commissioner, Plaintiff was found to be  
11 disabled, and was awarded a back-due award of disability benefits in the amount of  
12 \$96,958. Pl. Mot at 3; ECF No. 18-1 at 3. From this amount, the Commissioner withheld  
13 \$24,239.50 to satisfy a potential award of attorney fees. (ECF No. 18-1 at 3.)

14 Plaintiff's counsel now moves for court approval of attorney's fees under  
15 42 U.S.C. § 406(b), seeking an award of \$15,000, or approximately 15% of Plaintiff's  
16 past-due benefits. Pl. Mot. Counsel also states Plaintiff will be refunded \$7,600 for EAJA  
17 fees potentially awarded. *Id.* Defendant filed a response, and took no position on the  
18 motion. Def. Resp. (ECF No. 19.) Plaintiff has not filed a reply.

19 **II. LEGAL STANDARDS**

20 42 U.S.C. § 406(b) provides in relevant part:

21 Whenever a court renders a judgment favorable to a  
22 claimant under this subchapter who was represented before  
23 the court by an attorney, the court may determine and allow  
24 as part of its judgment a reasonable fee for such  
25 representation, not in excess of 25 percent of the total of the  
26 past-due benefits to which the claimant is entitled by reason  
27 of such judgment, and the Commissioner of Social Security  
may . . . certify the amount of such fee for payment to such  
attorney out of, and not in addition to, the amount of such  
past-due benefits. In case of any such judgment, no other  
fee may be payable or certified for payment for such  
representation except as provided in this paragraph.

28 42 U.S.C. § 406(b)(1)(A). The Commissioner typically does not act as an adversary, but

1 “plays a part in the fee determination resembling that of a trustee for the claimants.”  
2 *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002). Thus, “[b]ecause the  
3 [Commissioner] has no direct interest in how much of the award goes to counsel and  
4 how much to the disabled person, the district court has an affirmative duty to assure that  
5 the reasonableness of the fee is established.” *Crawford v. Astrue*, 586 F.3d 1142, 1149  
6 (9th Cir. 2009) (en banc).

7 In reviewing the fee request, the district court is to look first to the parties’  
8 contingency-fee agreement, then test it for reasonableness—always respecting “the  
9 primacy of lawful attorney-client fee agreements[.]” *Gisbrecht*, 535 U.S. at 793. The  
10 Supreme Court has noted that courts following this method may “appropriately reduce[]  
11 the attorney’s recovery based on the character of the representation and the results the  
12 representative achieved.” *Id.* at 808. To this end, the Ninth Circuit instructs:

13 A fee resulting from a contingent-fee agreement is  
14 unreasonable, and thus subject to reduction by the court, if  
15 the attorney provided substandard representation or  
16 engaged in dilatory conduct in order to increase the accrued  
17 amount of past-due benefits, or if the benefits are large in  
18 comparison to the amount of time counsel spent on the  
19 case. As an aid to the court’s assessment of the  
reasonableness of the fee yielded by the fee agreement, but  
not as a basis for satellite litigation, the court may require  
counsel to provide a record of the hours worked and  
counsel’s regular hourly billing charge for noncontingent  
cases.

20 *Crawford*, 586 F.3d at 1148 (quotations and alterations omitted). The burden of  
21 establishing the reasonableness of the fee falls on the attorney seeking the fee.  
22 *Gisbrecht*, 535 U.S. at 807 n.17.

23 Fees may be awarded under both § 406(b) and under the Equal Access to Justice  
24 Act (“EAJA”), however plaintiff’s attorney must refund to the plaintiff the smaller fee  
25 amount. *Gisbrecht*, 535 U.S. at 796.

### 26 **III. DISCUSSION**

27 Here, in support of the motion for attorney’s fees, Plaintiff’s counsel attached  
28 Plaintiff’s attorney-client agreement that provides for a contingency fee of up to 25% of

1 any past-due benefits. (ECF No. 18-3.) The Commissioner's Notice of Award indicates  
2 Plaintiff was awarded \$96,958 in past-due benefits, 25% of which (\$24,239.50) was  
3 withheld by the Commissioner to satisfy the potential attorney fee award. (See ECF No.  
4 18-1 at 3.) Plaintiff's counsel now seeks attorney's fees of \$15,000. Pl. Mot. The  
5 Commissioner neither supports nor opposes Plaintiff's counsel's request for attorney's  
6 fees, and has "given substantive consideration to the merits" and "found no basis to  
7 object." See Def. Resp. at 3.

8 In light of the guidance provided in *Crawford*, the Court finds counsel's fee  
9 request to be reasonable. As an initial matter, agreements providing for fees of 25% of  
10 past-due benefits are the "most common fee arrangement between attorneys and Social  
11 Security claimants." *Crawford*, 586 F.3d at 1147 (citation omitted). Additionally, the  
12 undersigned sees no indication Plaintiff's counsel performed substandard work or unduly  
13 delayed the case. To the contrary, counsel's work before this Court and before the  
14 Commissioner upon remand resulted in a favorable decision for Plaintiff and an award of  
15 benefits. Counsel assumed the risk of receiving no compensation, as Plaintiff's  
16 application for benefits was denied at the initial and reconsideration stages of the  
17 administrative process, again denied after a hearing before an Administrative Law  
18 Judge, and Plaintiff's request for review by the Social Security Appeals Council was  
19 denied. (ECF No. 11 at 4.)

20 Furthermore, the total amount sought (\$15,000) does not appear to be  
21 disproportionate to the amount of time counsel spent on the case. Counsel indicates he  
22 dedicated 32.8 hours in the proceedings before this Court. Pl. Mot. at 4; ECF No. 18-4 at  
23 1. Given the hours and amount sought, counsel's effective hourly rate would be \$457.32.  
24 The Court finds this rate reasonable, especially given the guidance in *Crawford* and  
25 cases finding much higher rates reasonable. See *Langston v. Saul*, 2020 WL 4501941,  
26 at \*3 (E.D. Cal. Aug. 5, 2020) (awarding fees on an effective hourly rate of \$1,453.42,  
27 when counsel requested \$23,400 for 16.10 hours of attorney work); *Thomas v. Colvin*,  
28 2015 WL 1529331, at \*2-3 (E.D. Cal. Apr. 3, 2015) (awarding fees on an effective hourly

1 rate of \$1,093.22 for 40.8 hours of work); *Villa v. Astrue*, 2010 WL 118454, at \*1-2 (E.D.  
2 Cal. Jan. 7, 2010) (noting that “[r]educing § 406(b) fees after *Crawford* is a dicey  
3 business”).


4 In sum, the Court finds the amount requested by counsel to be reasonable in light  
5 of the years of litigation and the result achieved, the lack of evidence suggesting dilatory  
6 conduct or a windfall to counsel, and the reasonable hourly rate. For these reasons, the  
7 Court awards counsel the requested amount of \$15,000 in attorneys’ fees under  
8 42 U.S.C. § 406(b). The Court directs this amount be paid to Plaintiff’s counsel, who  
9 shall then be responsible for reimbursing to Plaintiff the previously awarded EAJA fees of  
10 \$7,600.

11 **IV. CONCLUSION**

12 In conclusion, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff’s counsel’s motion for attorney’s fees under 42 U.S.C. § 406(b)  
14 (ECF No. 18) is GRANTED, and counsel is awarded \$15,000 from the  
15 withheld amounts;
- 16 2. Counsel is ordered to reimburse Plaintiff \$7,600 in previously awarded  
17 EAJA fees; and
- 18 3. Any past-due benefits withheld by the Commissioner in excess of the  
19 amount of attorney’s fees awarded shall be released to Plaintiff after all fee  
20 petitions are resolved.

21  
22 Dated: December 17, 2025

23   
24 CHI SOO KIM  
25 UNITED STATES MAGISTRATE JUDGE

26  
27  
28  
29 5, swar.1351.23